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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/808,755	03/25/2004	Jeffrey B. Fogel	1299-2	5871
28249	7590	03/03/2006	EXAMINER	
DILWORTH & BARRESE, LLP 333 EARLE OVINGTON BLVD. UNIONDALE, NY 11553			FETSUGA, ROBERT M	
			ART UNIT	PAPER NUMBER
			3751	

DATE MAILED: 03/03/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/808,755

Applicant(s)

FOGEL, JEFFREY B.

Examiner

Robert M. Fetsuga

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 25 March 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) 12 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-11 and 13-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 25 March 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 03/25/04.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

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1. This application contains claims directed to the following patentably distinct species of the claimed invention:

Species I: Figs. 1-3; and

Species II: Fig. 4.

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, no claims are considered to be generic.

Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

2. During a telephone conversation with John F. Gallagher, III on February 28, 2006 a provisional election was made with traverse to prosecute the invention of Species I, claims 1-11 and 13-20. Affirmation of this election must be made by applicant in replying to this Office action. Claim 12 is withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

3. The disclosure is objected to because of the following informalities: Paragraph 029, line 13 and paragraph 0030, line 9, "46" designates different elements.

Appropriate correction is required.

4. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the "holes" set forth in claim 5, and the subject matter set forth in claim 8, must be shown or the

feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

5. The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37

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CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: Proper antecedent basis for the "selectively engaging" language set forth in claim 1, "seal element" set forth in claims 4 and 14, smaller portion "end area" set forth in claim 5, and "hermetically coupled" feature set forth in claim 11, could not be found in the specification. Applicant is reminded claim terminology in mechanical cases should appear in the descriptive portion of the specification by reference to the drawing(s).

6. Claims 6, 7 and 19 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

Claim 6 recites a nozzle "configured to adjust fluid flow from mist to spray to stream." Claim 19 recites similar subject matter. Implementation of this subject matter is neither taught by the instant disclosure nor evident to the examiner.

7. Claim 8 is rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

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The claim recites a plug "shaped and dimensioned to press-fit the top of the reservoir." Implementation of this subject matter is neither taught by the instant disclosure nor evident to the examiner.

8. Claims 2 and 5 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 2 is unclear as to the relationship between the "larger portion" on line 3 thereof, and the "larger portion" on lines 2-3 of claim 1.

Claim 5 is unclear as to whether the "fluid" is intended to be part of the claimed combination since structure of the "bidet" is defined as being connected thereto (ln. 3), but no positive structural antecedent basis therefor has been defined.

9. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the

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effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. Claims 1-3, 9-11, 18 and 20 are rejected under 35

U.S.C. 102(b) as being anticipated by Haigh.

The Haigh reference discloses a "bidet" comprising: a reservoir A; a fluid-delivering unit including a larger portion B, a plug B2 having threads C2,C3, and a smaller portion C; and a lid D, as claimed.

11. Claims 1-4, 8, 10, 11 and 13-15 are rejected under 35

U.S.C. 102(b) as being anticipated by Pierce.

The Pierce reference discloses a fluid dispenser comprising: a reservoir 1; a fluid-delivering unit including a larger portion 5, a plug 3,4 having threads (pg. 1 lns. 50-51), and a smaller portion (between 6 and 7); a seal(ing) element (connecting 3 and 4), as claimed. The initial statement of intended use (bidet), and all other functional implications

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related thereto, have been considered but do not appear to impose any patentably distinguishing structure over that disclosed by Pierce. Re claim 8, the Pierce plug 3,4 would appear capable of being "press-fit" to the reservoir nipple 2.

12. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Pierce and Sneider.

Although the fluid-delivering unit of the Pierce dispenser does not include holes, as claimed, attention is directed to the Sneider reference which discloses an analogous dispenser which further includes a fluid-delivering unit 30-38 having holes 40. Therefore, in consideration of Sneider, it would have been obvious to one of ordinary skill in the fluid-delivering unit art to associate holes with the Pierce dispenser in order to facilitate fluid flow.

13. Claims 6, 7 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pierce and Sneider as applied to claim 5 above, and further in view of Leoncavallo et al.

Re claim 6, although the Pierce fluid-delivering unit does not include a nozzle, as claimed, attention is directed to the Leoncavallo et al. (Leoncavallo) reference which discloses an analogous fluid-delivering unit which further includes a nozzle 40. Therefore, in consideration of Leoncavallo, it would have been obvious to one of ordinary skill in the fluid-delivering

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unit art to associate a nozzle with the Pierce fluid-delivering unit in order to facilitate fluid dispensing. Furthermore, the Leoncavallo nozzle would appear capable of dispensing the claimed spray patterns (col. 4 ln. 62 thru col. 5 ln. 3).

Re claim 7, although the Pierce fluid-delivering unit does not include an angled portion, as claimed, attention is again directed to Leoncavallo which discloses an angled portion 34. Therefore, in further consideration of Leoncavallo, it would have been obvious to one of ordinary skill in the fluid-delivering unit art to associate an angled portion with the Pierce fluid-delivering unit in order to facilitate fluid dispensing.

14. Claim 16 is rejected under 35 U.S.C. 103(a) as being unpatentable over Pierce and Thompson.

Although the reservoir of the Pierce dispenser does not include a check valve, as claimed, attention is directed to the Thompson reference which discloses an analogous dispenser which further includes a reservoir 10 having a check valve 46. Therefore, in consideration of Thompson, it would have been obvious to one of ordinary skill in the dispenser art to associate a check valve with the Pierce reservoir in order to facilitate expansion.

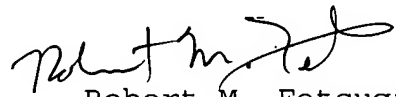
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15. Claim 17 is rejected under 35 U.S.C. 103(a) as being unpatentable over Pierce and Fulton.

Although the reservoir of the Pierce dispenser does not include a pump, as claimed, attention is directed to the Fulton reference which discloses an analogous dispenser which further includes a reservoir 1 having a pump 3. Therefore, in consideration of Fulton, it would have been obvious to one of ordinary skill in the dispenser art to associate a pump with the Pierce reservoir in order to facilitate fluid dispensing.

16. Applicant is referred to MPEP 714.02 and 608.01(o) in responding to this Office action.

17. Any inquiry concerning this communication should be directed to Robert M. Fetsuga at telephone number 571/272-4886 who can be most easily reached Monday through Thursday. The Office central fax number is 571/273-8300.


Robert M. Fetsuga
Primary Examiner
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